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## **OLR Bill Analysis**

### **sHB 6355**

#### ***AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.***

#### **SUMMARY:**

This bill expands the scope of the state's foreclosure mediation program by requiring that the program also address the disposition of property through means other than foreclosure, including short sales and deeds in lieu of foreclosure. The bill adds a requirement that mediators be unbiased and prohibits them from giving legal advice to any party in mediation.

The bill extends the foreclosure mediation program two years, to June 30, 2014, for foreclosure actions with return dates of July 1, 2008 through June 30, 2009. The program already runs until June 30, 2014 for foreclosure actions with return dates of July 1, 2009 through June 30, 2014.

The bill identifies the "objectives of the mediation program" and requires parties to attend foreclosure mediation sessions having the "ability to mediate," which means a general willingness and ability to participate in the mediation process.

The bill establishes a pre-mediation process, during which the mediator and the mortgagor must meet. A newly prescribed mediation information form must be used for foreclosure actions with certain return dates.

The bill requires the delivery of a complete financial package, from the mortgagor to the mortgagee, in connection with a request for a foreclosure alternative.

The bill requires that the mediation period ends by the conclusion of the third mediation session and removes the 30-day limit on the court's discretion to extend the period. The bill requires the court to include,

in its order, the rationale for extending the mediation period beyond six months after the return date.

The bill requires the court to conduct a hearing after the third mediation session and after each subsequent session to determine the status of the case and why resolution was not achieved, if the third mediation session ends without resolution and a request for a subsequent mediation session is made.

The bill allows (1) mortgagors to file special defenses or counterclaims under certain circumstances and (2) foreclosure to proceed under expedited procedures for certain abandoned and vacant properties.

The bill (1) establishes a requirement for assignors to record the assignment of mortgage debt in the land records of the municipality where the property is located and (2) creates a financial penalty for failure to do so.

EFFECTIVE DATE: Upon passage

## **§§ 1 & 3 — FORECLOSURE MEDIATION PROGRAM**

### **§ 3 — *Scope of the Program***

By law, the chief court administrator must, in each judicial district, establish a foreclosure mediation program in actions to foreclose mortgages on residential real property or real property owned by a religious organization.

By law, foreclosure mediation must address all issues of foreclosure, including:

1. reinstatement of the mortgage,
2. assignment of law days,
3. assignment of sale date,
4. restructuring of the mortgage debt, and

5. foreclosure by decree of sale.

The bill expands the scope of foreclosure mediation to include the disposition of the property through means other than foreclosure, including short sales and deeds in lieu of foreclosure.

By law, foreclosure mediation must be conducted by foreclosure mediators who (1) are employed by the Judicial Branch, (2) are trained in mediation and all relevant aspects of the law, (3) know about available community-based resources, and (4) know about the mortgage assistance programs. The bill requires mediators to be unbiased and prohibits them from giving legal advice to any party in mediation.

### **§ 1 — Objectives of the Program**

Objectives of the mediation program include:

1. determining whether or not the parties can reach an agreement that will (a) avoid foreclosure by considering any loss mitigation options available through the mortgagee or (b) expedite or facilitate the foreclosure in a manner acceptable to the parties and
2. an expectation that all parties must try to reach such determination with reasonable speed and efficiency by participating in the mediation process in good faith.

The bill specifies that participating in good faith does not include unreasonable and unnecessary delays and a failure to participate in good faith does not necessarily include acting with malice, intent to injure, or otherwise in bad faith.

### **§ 1 — Definitions**

By law, “mortgagor” means: (1) the owner-occupant of one-to-four family residential real property located in Connecticut who is also the borrower under a mortgage encumbering such residential real property, which is the primary residence of the owner-occupant, or (2) a religious organization that is the owner of real property located in

Connecticut and the borrower under a mortgage encumbering such real property. The bill explicitly excludes from the definition of mortgagor an heir or occupying nonowner of a property encumbered by a reverse annuity mortgage.

The bill defines “mortgagee” as the owner or servicer of the debt secured by a mortgage on residential real property or real property owned by a religious organization securing a loan made primarily for personal, family, religious, or household purposes that is the subject of a foreclosure action. Under current law, a mortgagee is the original owner or its successors or assigns who is the holder of any such mortgage.

Under the bill, "ability to mediate" means exhibiting a general willingness, including a general ability, to participate in the mediation process (1) in a manner consistent with the objectives of the mediation program and (2) in conformity with any obligations imposed by the program, including:

1. a general willingness and ability to respond to questions and specify or estimate when particular decisions will be made or particular information will be provided and
2. a general familiarity with the loan file and the loss mitigation options available to the mortgagor.

## **§ 2 — FORECLOSURE MEDIATION TIMELINES**

Under current law, the foreclosure mediation program establishes separate timelines and requirements depending on the return date (e.g. the day by which certain action must be taken) of the foreclosure action, as follows:

1. return date of July 1, 2008 through June 30, 2009 for residential real property;
2. return date of July 1, 2009 through June 30, 2014, for residential real property; and

3. return date of October 1, 2011 through June 30, 2014, for real property owned by a religious organization.

***Return Date of July 1, 2008 through June 30, 2009 for Residential Real Property***

By law, the foreclosure mediation program for foreclosure actions on residential real property with return dates from July 1, 2008 through June 30, 2009 closed June 30, 2012. With regard to such return dates, on or after July 1, 2012, (1) no foreclosure action may commence and (2) no foreclosure mediation request form may be submitted to the court. This bill reopens and extends the foreclosure mediation program for foreclosure actions on residential real property with return dates from July 1, 2008 through June 30, 2009 by two years, through June 30, 2014. Therefore, the court is prohibited from accepting foreclosure mediation request forms on or after July 1, 2014 for foreclosure actions with return dates from July 1, 2008 through June 30, 2009.

By law, when a mortgagee begins an action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2008 through June 30, 2009 the following process and timeline apply:

1. the mortgagee must give notice to the mortgagor of the foreclosure mediation program and, among other things, provide a foreclosure mediation request form;
2. a mortgagor may request foreclosure mediation by submitting the foreclosure mediation request form to the court and filing an appearance within 15 days after the return date for the foreclosure action; and
3. upon receipt of the foreclosure mediation request form, the court must notify each appearing party that a foreclosure mediation request form has been submitted by the mortgagor.

Under current law, the court may grant a mortgagor permission to submit a foreclosure mediation request form and file an appearance after the 15-day period if good cause is shown, but no foreclosure

mediation request form may be submitted and no appearance may be filed more than 25 days after the return date. The bill removes the 25-day limit and allows the court to extend the period so long as good cause is shown.

***Return Date of July 1, 2009 through June 30, 2014 for Residential Real Property; and October 1, 2011 through June 30, 2014 for Real Property Owned by a Religious Organization***

The bill makes several changes to the foreclosure mediation timeline and requirements for foreclosure actions with a return date of July 1, 2009 through June 30, 2014, for residential real property and October 1, 2011 through June 30, 2014, for real property owned by a religious organization.

***Mediation Information Form***

By law, when a mortgagee begins foreclosure action on residential real property with a return date on or after July 1, 2009, or, with respect to real property owned by a religious organization, a return date on or after October 1, 2011, the mortgagee must give notice to the mortgagor of the foreclosure mediation program. The notice must include:

1. a copy of the notice of foreclosure mediation;
2. a copy of the foreclosure mediation certificate form;
3. a blank appearance form; and
4. with respect to an action for the foreclosure of a mortgage on residential real property with a return date on or after October 1, 2011, a mediation information form and a notice containing contact information for authority-approved consumer credit counseling agencies.

The bill limits the use of the current mediation information to foreclosure actions with a return date from October 1, 2011 through September 30, 2013 and establishes a new mediation information form which must be used for an action to foreclose a mortgage on

residential real property with a return date on or after October 1, 2013. The new mediation information form must:

1. instruct the mortgagor on the objectives of the mediation program,
2. explain the process of preliminary meetings with the mediator,
3. instruct the mortgagor to begin gathering financial documentation commonly used in foreclosure mediation; and
4. include a notice containing contact information for authority-approved consumer counseling agencies, which must be in the form that the chief court administrator prescribes.

The bill requires the chief court administrator to design the mediation information form in consultation with banking industry representatives and consumer advocates.

#### ***Preparation for Mediation***

By law, the court issues a notice of foreclosure mediation to the mortgagor within three business days after the date the mortgagee returns the writ to the court. Under current law, the notice must (1) instruct the mortgagor to file the appearance and foreclosure mediation certificate forms with the court within 15 days after the return date for the foreclosure action and (2) remind the mortgagor to deliver the completed mediation information form and the accompanying documentation. The bill limits the reminder to complete the mediation information form to actions with a return date on or after October 1, 2011 through September 30, 2013.

By law, authority-approved housing counseling agencies may help prepare the mediation information form. The bill broadens this to allow them to help prepare for mediation in general.

#### ***Assignment of Mediator***

Under current law, the court must schedule a date for foreclosure mediation and notify all appearing parties of the mediation date when

it receives the mortgagor's appearance and foreclosure mediation certificate forms, provided the court confirms the defendant in the foreclosure action is a mortgagor and the mortgagor has sent a copy of the mediation certificate form to the plaintiff.

The bill instead requires that the court assign a mediator to the mortgagor at this time and notify all appearing parties of the assignment. The bill prohibits the court from assigning a mediator to the mortgagor if the appearance and foreclosure mediation certificate forms are not received from the mortgagor within 15 days after the return date.

***Account History Requirement***

The bill requires the mortgagee or its counsel, upon receiving the notice of assignment of a mediator and within 24 days of the return date, to e-mail to the mediator:

1. an account history identifying all credits and debits assessed to the loan account and any related escrow account in the immediately preceding 12 months and an itemized statement of the amount needed to reinstate the mortgage, with information, written in plain language, to explain any codes used in the history and statement which are not otherwise self-explanatory;
2. the name, business mailing address, e-mail address, fax number, and direct telephone number of someone who can respond with reasonable adequacy and promptness to questions about the information submitted, and provide prompt updates to such contact information;
3. all reasonably necessary forms and a list of all documentation reasonably needed for the mortgagee to evaluate the mortgagor for common foreclosure alternatives that are available through the mortgagee, if any;
4. a copy of the note and mortgage;
5. information regarding the status of any pending foreclosure



avoidance efforts being undertaken by the mortgagee;

6. a copy of any loss mitigation affidavit filed with the court; and
7. at the mortgagee's option, (a) the history of foreclosure avoidance efforts, (b) information regarding the condition of the mortgaged property, and (c) other information the mortgagee determines relevant to meeting the objectives of the mediation program.

### ***Mediator and Mortgagor Pre-mediation Meetings***

The bill requires the court to schedule a meeting with the mediator and the mortgagor after the mediator receives the account history information. The court must hold the meeting if possible within 38 days following the return date. The notice of the meeting must (1) include the forms and account history supplied by the mortgagee and (2) instruct the mortgagor to complete the forms before the meeting and provide the documentation listed above at the meeting.

The bill requires the mediator, at the meeting, to review the forms and documentation with the mortgagor along with the information supplied by the mortgagee. This review is to (1) discuss the options available to the mortgagor and (2) help the mortgagor complete the forms and provide the documentation necessary for the mortgagee to evaluate the mortgagor for foreclosure alternatives.

The bill allows the mediator to schedule subsequent meetings with the mortgagor and determine whether any mortgagor may be excused from appearing in person at any subsequent meeting.

### ***Delivery of Forms and Documents to Mortgagee***

The bill requires the mediator, within 73 days following the return date, to facilitate the delivery of the forms and documentation to (1) the mortgagee's counsel via fax or e-mail and (2) at the mortgagee's election, directly to the mortgagee per the mortgagee's instruction.

### ***Mediator's Report to the Court and the Court's Notice***

The bill also requires the mediator, within 73 days following the

return date, to file a report with the court, based on the mortgagor's attendance at the meetings and the extent the mortgagor completed the forms and furnished the required documentation, or failed to perform such tasks through no fault of the mortgagee. The report must indicate:

1. whether mediation must be scheduled with the mortgagee,
2. whether the mortgagor attended scheduled meetings with the mediator,
3. whether the mortgagor fully or substantially completed the forms and provided the documentation requested by the mortgagee,
4. the date on which the mortgagee supplied the forms and documentation to the mediator, and
5. any other information the mediator determines to be relevant to the objectives of the mediation program.

The bill specifies that no meeting or communication between the mediator and mortgagor should be treated as an impermissible *ex parte* communication.

If the mediator determines that the mortgagee must participate in mediation, the court must promptly issue notice of this to all parties and schedule a mediation session between the mortgagee and mortgagor. The bill requires that the first mediation session be held within five weeks following the final meeting between the mediator and the mortgagor.

If the mediator determines that no sessions between the mortgagee and mortgagor should be scheduled, the court must promptly issue notice of this to all parties and mediation must be terminated. The bill allows any mortgagor wishing to contest this determination to petition the court and show good cause for being included in the mediation program, including (1) a material change in financial circumstances or (2) a misapprehension of facts by the mediator.

***Court Referral to Mediation***

Under current law, the court may refer a foreclosure action to the foreclosure mediation program at any time if (1) the mortgagor has filed an appearance and (2) the court sends a notice to each appearing party within three business days after making the referral. The bill limits the referral to when good cause is shown. The bill specifies that, when determining whether good cause exists, the court must consider (1) whether the parties are likely to benefit from mediation and (2) in the case of a referral after prior attempts at mediation have been terminated, whether there has been a material change in circumstances.

Under current law, the court's referral notice schedules the first foreclosure mediation session within 35 days after the date of the referral. The bill instead requires the referral notice to assign a mediator and require the parties to participate in the pre-mediation process (described above). The court must establish deadlines to ensure that the pre-mediation process is completed as expeditiously as circumstances warrant and permit.

***Special Pleadings during the Eight-month Stay***

Under current law, there is an eight-month stay on pleadings from the return date of the foreclosure action. The bill allows the mortgagor to file an answer, special defenses, or counterclaims during this period.

**§ 4 — MEDIATION PERIOD, INFORMATION REQUIRED, AND TERMINATION**

By law, the mediation period, information required, and mediation termination depend on the return date of the foreclosure action, as follows:

1. return date of July 1, 2008 through June 30, 2009 for residential real property;
2. return date of July 1, 2009 through June 30, 2014 for residential real property; and
3. return date of October 1, 2011 through June 30, 2014 for real

property owned by a religious organization.

The following information applies to all return dates unless otherwise stated.

### ***Conclusion of the Mediation Period***

Under current law, the mediation period must conclude within 60 days after the return date for the foreclosure action except the court has the discretion to, for good cause shown, (1) extend, up to 30 days, or shorten the mediation period on its own motion or upon motion of any party, or (2) extend by up to 30 days the mediation period upon written request of the mediator. The bill instead requires that the mediation period ends by the end of the third mediation session. It removes the 30-day limit on the court's discretion to extend the period.

If the court orders mediation to extend beyond six months after the return date, its order must include its rationale. The bill allows the court to rely on the findings and reports submitted by the mediator and any supplemental report submitted by a party in its decision to extend the mediation program.

### ***Appearance at Mediation Sessions***

Current law requires that the mortgagor and mortgagee appear in person at each mediation session and with authority to agree to a proposed settlement. The bill requires, instead, that the parties appear at each session with the ability to mediate. Current law makes an exception for a mortgagee who is represented by counsel under certain circumstances. The bill makes this exception apply to all parties, but requires that the mortgagor attend the first mediation session in person.

Under current law, following the first mediation session, if there are two or more mortgagors, only one mortgagor must appear in person at each subsequent mediation session unless good cause is shown, if the other mortgagors are available (1) during the mediation session, and (2) to participate in the mediation session by speakerphone, if an opportunity is afforded for confidential discussions among the

mortgagors and the mortgagors' counsel. The bill removes the condition that there must be an opportunity for confidential discussions. For foreclosure actions with a return date of July 1, 2009 through June 30, 2014 for residential real property and return date of October 1, 2011 through June 30, 2014 for real property owned by a religious organization, the bill limits this provision to apply to mortgagors who represent themselves.

The bill allows the mediator to grant permission to a party to participate in the mediation session by telephone if the party suffers from a disability or other significant hardship that imposes an undue burden on such party to appear in person.

The bill allows a mortgagor's spouse, who is not a mortgagor but who lives in the subject property, to appear at each mediation session, if (1) all appearing mortgagors consent to the spouse's appearance or the spouse shows good cause for his or her appearance and (2) the mortgagors consent to the disclosure of nonpublic personal information to the spouse.

### ***Complete Financial Package***

If the mortgagor has submitted a complete package of financial documentation in connection with a request for a particular foreclosure alternative, the bill requires the mortgagee to (1) respond with a decision within 35 days from the receipt of the completed package and (2) if the decision is a denial, provide the reasons for the denial.

The bill requires the mortgagee to request any missing or additional information within a reasonable period of time if (1) the mortgagor submitted a financial package that is not complete, or (2) the mortgagee's evaluation of a complete package reveals that additional information is necessary to underwrite a request for a foreclosure alternative.

The bill allows the mortgagee's response date to be extended beyond the 35-day deadline if the mortgagee's evaluation of a

complete package reveals that additional information is necessary to underwrite the request, but only for so long as is reasonable given (1) the timing of the mortgagor's submission of the additional information and (2) the nature and context of the required underwriting.

***Mediator's Report***

The bill requires the mediator to file a report with the court following each mediation session. The report must indicate:

1. the extent to which each party complied with the mediation program requirements;
2. whether the mortgagor submitted a complete package of financial documentation to the mortgagee;
3. a general description of the foreclosure alternative being requested by the mortgagor;
4. whether the mortgagor has previously been evaluated for similar requests, and, if so, whether there has been any apparent change in circumstances since the decision in the prior evaluation;
5. whether the mortgagee has responded to the mortgagor's request for a foreclosure alternative and, if so, a description of the response and its apparent reasonableness;
6. whether the mortgagor has responded to an offer made by the mortgagee on a reasonably timely basis, and if so, an explanation of the response;
7. whether the mortgagee has requested additional information from the mortgagor and, if so, the stated reasons for the request and the date by which such additional information must be submitted;
8. whether the mortgagor has supplied, on a reasonably timely basis, any additional information that was reasonably requested by the mortgagee, and, if not, the stated reason for not doing so;

9. if information provided by the mortgagor is no longer current for purposes of evaluating a foreclosure alternative, a description of the out-of-date information and an explanation of why such information is no longer current;
10. whether the mortgagee has provided a reasonable explanation of the basis for a decision to deny a request for a loss mitigation option or foreclosure alternative and whether the mediator is aware of any material reason not to agree with that decision;
11. whether the mortgagee has complied with the bill's timeframes for responding to requests for decisions; and
12. if a subsequent mediation session is expected to occur, a general description of the expectations for that session and, if not already addressed in the report, whether the parties satisfied the expectations described in previous reports.

The bill requires the mediator to file this report with the court within three business days after the mediation session, and email a copy to all the parties.

The bill specifies that the parties have the opportunity to submit their own supplemental information following the filing of the mediator's report; however, the supplemental information must be submitted within five business days following the mediation session. Requests for additional or updated financial documentation must be made in writing.

### ***Court Sanctions***

The bill allows the court to impose sanctions on any party or on a party's counsel who, during the mediation process, engages in intentional or multiple instances of conduct contrary to the objectives of the mediation program.

Any sanction that is imposed must be proportional to the conduct and consistent with the objectives of the mediation program. Available sanctions include:

1. terminating mediation;
2. ordering the mortgagor or mortgagee to mediate in person;
3. forbidding the mortgagee from charging the mortgagor for the mortgagee's attorney's fees;
4. awarding attorney's fees;
5. imposing fines payable to the court or aggrieved party; and
6. in egregious situations, barring interest accrual with regard to the underlying loan.

By law, the court is prohibited from awarding attorney's fees to a mortgagee for time spent in any mediation session if the mortgagee fails to comply with the requirements of the mediation sessions without good cause.

#### ***Continuation of the Mediation Sessions***

Under current law, the mediator must, within two days after the first mediation session, determine whether the parties will benefit from further mediation. The bill requires this determination to be made within two days after each session.

Under current law, if the mediator reports to the court after the first mediation session that the parties may benefit from further mediation, the mediation period must continue. The bill extends this to the second session also.

Under current law, for foreclosure actions with a return date of July 1, 2009 through June 30, 2014 for residential real property and return date of October 1, 2011 through June 30, 2014 for real property owned by a religious organization, failure to comply with the documentation requirements of the mediation program is not grounds for terminating the mediation period before a second mediation session is conducted. The bill deletes this provision.

#### ***Policies and Procedures***



Under current law, the chief court administrator must establish policies and procedures that, at a minimum, require the mediator to advise the mortgagor at the first mediation session that (1) mediation does not suspend the mortgagor's obligation to respond to the foreclosure action and (2) a judgment of strict foreclosure or foreclosure by sale may cause the mortgagor to lose the property to foreclosure. The bill requires that the mediator provide this advice at the first pre-mediation meeting instead. For foreclosure actions with a return date of July 1, 2008 through June 30, 2009 the bill removes the requirement to advise the mortgagor that mediation does not suspend the mortgagor's obligation to respond to the foreclosure action.

### ***Court Hearing after Third Mediation Session***

The bill requires the court to conduct a hearing following the third mediation session and each subsequent mediation session, if (1) the third mediation session concludes without resolution of the action and (2) there is a request for a subsequent mediation session. The hearing must determine the status of the case and why it has not been resolved. No hearing is needed if a mediator or a party to the mediation, through a motion, shows good cause for postponing the hearing until the conclusion of the subsequent mediation session. The bill establishes that, with the exception of the first continued session, the mediation sessions that continue with the consent of the mortgagor and mortgagee must be counted as a mediation session.

### ***Cases Pending on October 1, 2013***

For any case pending on October 1, 2013, in which mediation is ongoing, the bill specifies how sessions should be counted for purposes of determining if a hearing should be held. Specifically,

1. if three or fewer sessions have been held, the case must be treated as if no sessions have been held and
2. if four or more sessions have been held, then a hearing may be held after either the first or second sessions which occur on or after October 1, 2013.

A hearing must be conducted after the third session that occurs after October 1, 2013, following the granting of a motion made by the mediator or a party.

## **§ 5 — EXPEDITED FORECLOSURE PROCEDURES FOR VACANT AND ADANDONED PROPERTIES**

### ***Expedited Proceedings Permitted***

The bill allows an expedited foreclosure action by allowing a mortgagee to file a motion for judgment of foreclosure simultaneously with a motion for default for failure to appear. This is allowed only if the mortgagee proves by clear and convincing evidence, and with a proper affidavit, that (1) the real property that is the subject of the foreclosure action is not occupied by a mortgagor, tenant, or other occupant and (2) at least three of the following conditions exist:

1. statements of neighbors, delivery persons, or government employees indicate that the property is vacant and abandoned;
2. windows or entrances are boarded up or closed off or multiple window panes are damaged, broken, or unrepaired;
3. doors to the property are smashed through, broken off, unhinged, or continuously unlocked;
4. acts of vandalism, loitering, criminal conduct, or physical destruction of the property create a risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners;
5. a municipal order declares the property (a) unfit for occupancy and (b) must remain vacant and unoccupied;
6. the mortgagee secured or winterized the property because the property was deemed vacant and unprotected or in danger of freezing; or
7. a written statement by any mortgagor or any tenant expressing the clear intent of all occupants to abandon the property.

***Expedited Proceedings Prohibited***

The bill prohibits a foreclosure action from proceeding under expedited procedures if the property includes any of the following:

1. an unoccupied building undergoing construction, renovation, or rehabilitation that is moving toward completion and is in compliance with all applicable ordinances, codes, regulations, and statutes;
2. a secure building occupied on a seasonal basis; or
3. a secure building that is the subject of a probate action to quiet title or other ownership dispute.

**§ 6 — SPECIAL PLEADINGS FOR MORTGAGORS**

The bill allows a mortgagor in a foreclosure action to plead special defenses or counterclaims arising out of facts that occurred after (1) the making of the note or mortgage or (2) any alleged default on the note or mortgage, regardless of whether the pleading relates to the making, validity, or enforcement of the note and mortgage. It allows this only if the pleading:

1. relates to facts that entirely or primarily precede the foreclosure action;
2. arises from the relationship between the mortgagor and the mortgagee or its servicer;
3. constitutes a valid special defense or counterclaim in law or equity; and
4. contains facts alleged with particularity and documented to the extent practicable, if required by the court.

The bill prohibits a mortgagor from filing any motion, request, or demand with respect to a pleading while mediation is pending unless the mortgagee does so first.

The bill authorizes the court to strike any special defense or

counterclaim if it finds that the primary purpose of the pleading was to delay the foreclosure action.

## **§ 7 — ASSIGNMENT AND RECORDING OF MORTGAGE DEBT**

By law, the recording of an assignment of mortgage debt is not sufficient notice of the assignment to the party obliged to pay such mortgage debt. The bill establishes a new reporting requirement for assignors by requiring any assignor of mortgage debt to report to the town clerk of the municipality where the property is located every mortgage assignment involving property located in Connecticut. The report must be submitted twice a year and must contain:

1. the registrant's name, address, telephone number and e-mail address;
2. a list containing the street address and municipality in which security for the assigned mortgage debt exists; and
3. the date of execution of the assignment.

The bill imposes a fee of \$53 for each assignment that is not recorded in the municipal land records. The assignor must pay the fee to the State Treasurer. The bill requires the treasurer to allocate the fee as follows:

1. \$36 must be deposited in the General Fund and credited to the community investment account;
2. \$2 must be deposited in the General Fund and credited to the historic documents preservation account; and
3. \$15 must be given to the municipality in which the property is located (\$11 for the municipality's general revenue and \$4 for the preservation of historic documents and deposited in the town clerk fund).

The bill subjects any person who violates the recording requirements to a civil penalty of \$100 for each day of the violation. Each failure to report any single assignment is an independent

violation.

The bill authorizes the Attorney General to institute a civil action in Superior Court to collect such penalty, which must be payable to the state.

## **BACKGROUND**

### ***Related Bill***

HB 6419, favorably reported by the Housing Committee, extends the judicial foreclosure mediation program by two years, until July 1, 2016. This extension applies to foreclosure actions with return dates on or after July 1, 2009 for residential real property and October 1, 2011 for real property owned by a religious organization.

## **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 11 Nay 6 (03/14/2013)